

Introduced by Senator Burton
(Principal coauthor: Senator Polanco)
(Coauthor: Senator Karnette)
(Coauthors: Assembly Members Baugh, Cardoza, and
Granlund)

February 26, 1999

An act to amend Section 43104 of, and to add Sections 39027.3 and 43105.5 to, the Health and Safety Code, and to amend Section 27156 of the Vehicle Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, as introduced, Burton. Motor vehicles: pollution control devices.

(1) Existing law authorizes the State Air Resources Board to adopt and implement emission standards for new motor vehicles to control emissions from those vehicles.

This bill would require a motor vehicle manufacturer to provide, with respect to any motor vehicle and motor vehicle engine sold, specified information and tools to persons engaged in the business of service, repair, manufacture, or remanufacture of emissions-related motor vehicle parts, as defined. The bill would require the state board to assemble a panel of arbitrators to resolve individual disputes regarding the availability and cost of the information and tools.

The bill would provide that any information required to be provided by the bill that is confidential, proprietary, or trade secret information, shall be safeguarded, as specified, and would make it a crime to willfully obtain information in

violation of this provision. By creating a new crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and
2 declares all of the following:

3 (a) The growing practice of preventing qualified
4 automotive repair technicians and aftermarket parts
5 manufacturers from repairing vehicles equipped with
6 onboard diagnostic computers is contrary to the public
7 interest.

8 (b) This practice, if left unchecked, may adversely
9 effect California's highly mobile economy that depends
10 heavily on 26 million vehicles, the largest fleet of
11 registered vehicles in the United States.

12 (c) The withholding of service information by vehicle
13 manufacturers from qualified automotive repair
14 technicians may result in improper mechanical and
15 electrical operation of these vehicles and can endanger
16 the individual health, safety, and welfare of California's 32
17 million residents.

18 (d) The withholding of technologically advanced tool
19 and part manufacturing information repair technicians
20 could result in a drastic increase in the approximately
21 thirteen billion dollars (\$13,000,000,000) currently spent
22 on professional automotive repair services and the two
23 billion six hundred million dollars (\$2,600,000,000)
24 currently spent by Californians on parts and accessories
25 each year to maintain their vehicles.

26 (e) This increased cost to California consumers may be
27 directed to businesses outside of the state or to California

1 businesses whose parent company is located in another
2 state or country. This would have an adverse effect on the
3 automotive repair industry in California that employs
4 approximately 300,000 workers.

5 (f) In order to properly serve California's consumers,
6 today's independent automotive technician must be able
7 to work easily with all automotive computer systems,
8 including, but not limited to, onboard diagnostic systems,
9 and be able to perform necessary diagnostics, repairs, and
10 reprogramming functions and provide competitively
11 priced replacement parts.

12 (g) An estimated 34,000 independent automotive
13 repair shops and 1,200 new car dealerships each year file
14 business applications and pay annual fees to the Bureau
15 of Automotive Repair for an automotive repair dealer
16 registration. Independent automotive repair small
17 businesses constitute the vast majority, approximately 97
18 percent, of the facilities that Californians have come to
19 rely on for service, while the new car dealerships
20 represent only a small minority, approximately 3 percent.

21 (h) Existing law authorizes the State Air Resources
22 Board to adopt and implement emission standards for
23 new motor vehicles to control mobile emissions. In the
24 past several years, the automobile manufacturers have
25 sought compliance with these standards in a manner that
26 favors the new car dealerships and inadvertently denies
27 independent automotive repair facilities access to
28 necessary repair information, tools, and competitively
29 priced replacement parts.

30 (i) The effectiveness of California's vehicle inspection
31 and maintenance program in reducing 112 tons of
32 harmful emissions per day from onroad vehicles relies
33 entirely upon the proper inspection, maintenance,
34 diagnosis, and repair of our state's 26 million vehicles by
35 independent automotive repair technicians.

36 (j) It is in the interest of the California consumer that
37 all members of the automotive repair industry have
38 necessary access to diagnostic and repair information,
39 tools, and replacement parts thereby enabling them to

1 provide competent and competitive service to the state's
2 26 million vehicles and their owners.

3 SEC. 2. Section 39027.3 is added to the Health and
4 Safety Code, to read:

5 39027.3. "Emissions-related motor vehicle part"
6 means any automotive part that affects or that may affect
7 emissions from a motor vehicle, including replacement
8 parts, consolidated parts, rebuilt parts, remanufactured
9 parts, add-on parts, modified parts, and specialty parts.

10 SEC. 3. Section 43104 of the Health and Safety Code
11 is amended to read:

12 43104. For the certification of new motor vehicles or
13 new motor vehicle engines, the state board shall adopt, by
14 regulation, test procedures *and any other procedures*
15 *necessary* to determine ~~whether such~~ *the following*:

16 (a) *Whether the* vehicles or engines are in compliance
17 with the emission standards established pursuant to
18 Section 43101. The state board shall base its test
19 procedures on federal test procedures or on driving
20 patterns typical in the urban areas of California.

21 (b) *Whether a manufacturer is in compliance with*
22 *Section 43105.5.*

23 SEC. 4. Section 43105.5 is added to the Health and
24 Safety Code, to read:

25 43105.5. (a) For any motor vehicle or motor vehicle
26 engine sold, the manufacturer shall provide to a person
27 engaged in the business of service, repair, manufacture,
28 or remanufacture of emissions-related motor vehicle
29 parts, the information and tools necessary to service and
30 repair the vehicle or engine, or to design, manufacture,
31 remanufacture, test, and install an emissions-related
32 motor vehicle part. The information shall include
33 enhanced diagnostic information, reprogramming
34 capability, and the operating parameters and
35 specifications within which an emissions-related motor
36 vehicle part must function so as not to activate any code
37 or device designed to alert the vehicle owner or
38 technician of a possible emissions problem.



1 (b) The manufacturer may charge a fee, not to exceed
2 its actual cost, to provide the information and tools
3 specified in subdivision (a).

4 (c) The motor vehicle manufacturer shall provide the
5 information required by subdivision (a) in a readily
6 accessible electronic format that is compatible with
7 computer systems commonly used in the automotive
8 aftermarket industry and that is accessible without the
9 need of any decoding information or device.

10 (d) Any person engaged in the business of service,
11 repair, manufacture, or remanufacture of
12 emissions-related motor vehicle parts is entitled to
13 unrestricted access to, and use of, information in the
14 onboard computer and the onboard diagnostic system for
15 the purposes of servicing and repairing a vehicle, and
16 designing, manufacturing, remanufacturing, testing, and
17 installing an emissions-related motor vehicle part. No
18 motor vehicle pollution control device shall be potted or
19 soldered or in any manner designed to preclude the
20 access or use mandated by this subdivision.

21 (e) Any information required to be disclosed under
22 this section that the motor vehicle manufacturer can
23 demonstrate is confidential, proprietary, or trade secret
24 information shall be safeguarded, in a manner specified
25 by the state board, to prevent disclosure to any person
26 other than a person described in subdivision (d) of
27 Section 27156 of the Vehicle Code.

28 (f) The state board shall assemble a panel of
29 independent and impartial arbitrators to resolve
30 individual disputes regarding the availability and cost of
31 the information and tools required to be provided by a
32 manufacturer pursuant to this section.

33 SEC. 5. Section 27156 of the Vehicle Code is amended
34 to read:

35 27156. (a) No person shall operate or leave standing
36 upon any highway any motor vehicle ~~which~~ *that* is a gross
37 polluter, as defined in Section 39032.5 of the Health and
38 Safety Code.

39 (b) No person shall operate or leave standing upon any
40 highway any motor vehicle ~~which~~ *that* is required to be

1 equipped with a motor vehicle pollution control device
2 under Part 5 (commencing with Section 43000) of
3 Division 26 of the Health and Safety Code or any other
4 certified motor vehicle pollution control device required
5 by any other state law or any rule or regulation adopted
6 pursuant to that law, or required to be equipped with a
7 motor vehicle pollution control device pursuant to the
8 National Emission Standards Act (42 U.S.C. Secs. 1857f-1
9 to 1857f-7, inclusive) and the standards and regulations
10 adopted pursuant to that federal act, unless the motor
11 vehicle is equipped with the required motor vehicle
12 pollution control device ~~which~~ *that* is correctly installed
13 and in operating condition. No person shall disconnect,
14 modify, or alter any ~~such~~ required *motor vehicle*
15 *pollution control device*.

16 (c) No person shall install, sell, offer for sale, or
17 advertise any device, apparatus, or mechanism intended
18 for use with, or as a part of, any required motor vehicle
19 pollution control device or system ~~which~~ *that* alters or
20 modifies the original design or performance of any ~~such~~
21 motor vehicle pollution control device or system.

22 (d) *No person shall obtain information deemed to be*
23 *confidential, proprietary, or trade secret information as*
24 *provided in subdivision (e) of Section 43105.5 of the*
25 *Health and Safety Code unless the person is engaged in*
26 *the business of service, repair, manufacture, or*
27 *remanufacture of emissions-related motor vehicle parts*
28 *or is in the business of providing information or service to*
29 *a business that conducts the service, repair, manufacture,*
30 *or remanufacture, and has obtained any applicable state*
31 *license necessary to lawfully conduct that business.*

32 (e) If the court finds that a person has willfully violated
33 this section, the court shall impose the maximum fine that
34 may be imposed in the case, and no part of the fine may
35 be suspended.

36 ~~(e)~~

37 (f) “Willfully,” as used in this section, has the same
38 meaning as the meaning of that word prescribed in
39 Section 7 of the Penal Code.

40 ~~(f)~~

(g) No person shall operate a vehicle after notice by a traffic officer that the vehicle is not equipped with the required certified motor vehicle pollution control device correctly installed in operating condition, except as may be necessary to return the vehicle to the residence or place of business of the owner or driver or to a garage, until the vehicle has been properly equipped with ~~such~~ *a* the device.

~~(g)~~

(h) The notice to appear issued or complaint filed for a violation of this section shall require that the person to whom the notice to appear is issued or against whom the complaint is filed produce proof of correction pursuant to Section 40150 or proof of exemption pursuant to Section 4000.1 or 4000.2.

~~(h)~~

(i) This section ~~shall~~ *does* not apply to an alteration, modification, or modifying device, apparatus, or mechanism found by resolution of the State Air Resources Board to do either of the following:

(1) Not to reduce the effectiveness of any required motor vehicle pollution control device.

(2) To result in emissions from any such modified or altered vehicle which are at levels which comply with existing state or federal standards for that model year of the vehicle being modified or converted.

~~(i)~~

(j) This section applies to motor vehicles of the United States or its agencies, to the extent authorized by federal law.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition

- 1 of a crime within the meaning of Section 6 of Article
- 2 XIII B of the California Constitution.

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